

REMARKS

Claims 1-13 and 21-34 are pending in this application. By this Amendment, claims 3, 21 and 31 are amended. The claim amendments introduce no new matter as they serve only to better clarify the subject matter recited in the claims and to correct an informality in claim 31. Reconsideration based on the above amendments and the following remarks is respectfully requested.

The Office Action, on page 2, states that if claim 29 is found allowable, claim 31 would be objected to as essentially a duplicate. Claim 31 is amended to overcome any such objection arising.

The Office Action, on page 5, states that claims 1 and 2 are allowed and that claims 33 and 34 contain allowable subject matter. Applicants appreciate the allowance of claims 1 and 2 and the indication of allowability of claims 33 and 34.

The Office Action, on pages 2 and 3, rejects claims 3-5, 10, 11, 21-23, 28, 29, 31 and 32 under 35 U.S.C. 102(e) as being unpatentable over U.S. Patent No. 6,221,026 to Phillips. This rejection is respectfully traversed.

The Office Action states that the language "for testing for hepatic disease" on lines 1 and 2 of claim 3 and "for testing for hepatic cirrhosis" on line 1 of claim 21 is merely intended use language which cannot be relied upon to define over Phillips. Claims 3 and 21 are amended to positively recite a data-processing section which analyzes the quantified result obtained by the breath analyzing section to detect a hepatic disease (or to detect hepatic cirrhosis). Applicants respectfully submit that such recitation is not merely intended use but rather specifically better clarifies the features of the data-processing section recited in independent claims 3 and 21. As such, because Phillips does not disclose a data-processing section to test for hepatic disease and/or hepatic cirrhosis, Applicants respectfully submit that Phillips cannot be read to teach, or even to have suggested, all of the features of at least

independent claims 3 and 21. Further, Applicants respectfully submit that dependent claims 4, 5, 10, 11, 22, 23, 28, 29, 31 and 32 are also neither anticipated, nor would they have been suggested, by Phillips for at least the respective dependence of these claims on independent claims 3 and 21, as well as for the separately patentable subject matter which these claims recite.

Accordingly, reconsideration and withdrawal of the rejection of claims 3-5, 10, 11, 21-23, 28, 29, 31 and 32 under 35 U.S.C. §102(e) as being unpatentable over Phillips are respectfully requested.

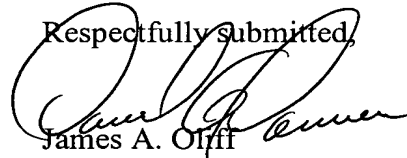
The Office Action, on pages 4 and 5, rejects claims 6-9, 12, 13, 24-27 and 30 under 35 U.S.C. §103(a) as being unpatentable over Phillips in view of U.S. Patent No. 5,573,005 to Ueda. This rejection is respectfully traversed.

Applicants respectfully submit that Ueda, in its detailed disclosure of a breath collection apparatus, does not overcome the shortfalls in the application of Phillips to at least independent claims 3 and 21. As such, Applicants respectfully submit that claims 6-9, 12, 13, 24-27 and 30 are not taught, nor would they have been suggested by, the combination of the applied references for at least the respective dependence of these claims on independent claims 3 and 21, as well as for the separately patentable subject matter which these claims recite.

Accordingly, reconsideration and withdrawal of the rejection of claims 6-9, 12, 13, 24-27 and 30 under 35 U.S.C. §103(a) as being unpatentable over the combination of the applied references are respectfully requested.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 3-13 and 21-32, in addition to the allowance of claims 1 and 2 and the indicated allowable subject matter in claims 33 and 34, are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,

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JAO:DAT

Date: January 14, 2005

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